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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14)
15 In re BROCADE COMMUNICATIONS)
16 SYSTEMS, INC., DERIVATIVE)
17 LITIGATION)

Case No. C 05-02233 CRB

**STATEMENT OF POSITION REGARDING
SUBJECT MATTER JURISDICTION**

Hearing Date: April 27, 2007 at 10:00 a.m.
Before: Honorable Charles R. Breyer

18)
19 This Document Relates To:)

20 ALL ACTIONS.)
21)
22)
23)
24)
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26)

1 KPMG LLP (“KPMG”) respectfully submits the following facts and law relevant to the
2 Court’s determination of its subject matter jurisdiction over this action.

3 KPMG was not served with the complaint until September 27, 2006, well after the Court
4 dismissed the complaint, and the plaintiffs and other defendants had entered into a stipulated
5 settlement releasing all claims against certain defendants, including KPMG. Because the action had
6 been pending for over a year before KPMG was served, and no question as to the Court’s
7 jurisdiction had been raised, KPMG and its counsel did not conduct a jurisdictional analysis until
8 after Objectors raised the potential jurisdictional defect on April 6, 2007.

9 Because KPMG is a limited liability partnership, KPMG is a citizen of each state of which its
10 partners are citizens. *See Carden v. Arkoma Assoc.*, 494 U.S. 185, 195–96 (1990) (stating rule for
11 limited partnerships); 15 James Wm. Moore et al., *Moore’s Federal Practice* § 102.57[9] (3d ed.
12 2006) (noting the *Carden* rule is the same for limited liability partnerships). KPMG has partners
13 who are citizens of New York, New Jersey, and Florida (among other states), and thus KPMG
14 considers itself a citizen of those states for purposes of diversity jurisdiction.

15 KPMG respectfully suggests that Plaintiffs and/or the Court may correct the jurisdictional
16 defect here by dismissing KPMG from this action without prejudice. *See* Fed. R. Civ. P. 21 (“Parties
17 may be dropped or added by order of the court on motion of any party or of its own initiative at any
18 stage of the action and on such terms as are just.”). This would allow the Court to maintain
19 jurisdiction and approve the parties’ settlement.

20 Dated: April 26, 2007

Respectfully submitted,

21 SIDLEY AUSTIN LLP

22 By: /s/ Geoffrey M. Ezgar

23 Geoffrey M. Ezgar

24 Attorneys For Defendant KPMG LLP